IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 22998 of 2004

Between:

1 Sri Seshadri Rice Industires having its Registered Office at Ashoknagar, N.V.Gardens, Neloore-2 rep. by its partners.
Boyapati Venkatesh, S/o.Ramaiah aged about 36 years R/o.D.No.4-1-304, Mukundapuram, nellore-2
2 Bellamkonda Venkaiah, S/o.Krishnaiah
R/o.D.No.4-1-304, Mukundapuram, Nellore-2.

..... PETITIONERS

AND

The Chief Manager and Authorised Officer State Bank of India, Vedayapalem, Nellore.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus under Article 226 of the Constitution of India, declaring the possession notice dated 29-10-2004 published in Eeenadu daily dated 28.11.2004 issued by the Chief Manager and Authorised Officer, State Bank of India, Vedayapalem, Nellore for item -I of the immoveable property ie., the land in Patta No.220, Sy.No.203/2, Assessment No.577, extent Ac 1.69 cents (Total extent Ac.8.16 cents) of Navalak Gardens, Nellore Rural Mandal, Nellore District is arbitrary, illegal, in violation of section 13 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, without Jurisdiction and consequently set aside the possession Notice for item-I of the immoveable property i.e., the land in Patta No.220, Sy.No.203/A/2, Assessment No.577, extent Ac 1.69 cents (total extent Ac 8.16 Cents) of Navalak Gardens, Nellore Rural Mandal, Nellore District and pass such other order or orders.

Counsel for the Petitioners: MR.CH.CKRISHNA REDDY

Counsel for the Respondent: MR.M.NARENDER REDDY

The Court at the stage of admission made the following ORDER:

The petitioner challenges a notice dated 29-10-2004, published on 28-11-2004, issued by the respondent in exercise of his powers under Section 13 of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). The petitioner states that one M/s. Lakshmi Ganapathi Raw & Boiled Rice Mill obtained loan from the respondent and as a security for repayment has mortgaged some of the properties belonging to it. It is also alleged that some of the properties of the petitioner were also mortgaged in its capacity as guarantor. It is stated that Section 13 of the Act empowers the respondent to proceed against the properties of the borrowers and not that of the guarantors. The impugned notice relates to the property of the petitioner.

Heard learned counsel for the petitioner and learned standing counsel for the respondent.

At the first blush, on a reading of Section 13 of the Act, the arguments advanced on behalf of the petitioner appears to be acceptable. The Section empowers the respondent to take possession of the mortgaged property on the failure of the borrower to repay the amount in response to a notice of demand.

Admittedly, the petitioner is not a borrower and is only a guarantor. However, if a reference is made to the definition of "borrower" under Clause (f) of Section 2 of the Act, it is very clear that the term takes in its fold not only the actual borrower, but a guarantor also. It is not in dispute that the petitioner is a borrower and that the property in question was mortgaged. In that view of the matter no exception can be taken to the impugned notice.

The writ petition is accordingly dismissed. No order as to costs.

13-12-2004

kdl

To

1 The Chief Manager and Authorised Officer State Bank of India, Vedayapalem, Nellore.

2 Two C.D. Copies.